



JANET T. MILLS
GOVERNOR

STATE OF MAINE
DEPARTMENT OF AGRICULTURE, CONSERVATION & FORESTRY
LAND USE PLANNING COMMISSION
22 STATE HOUSE STATION
AUGUSTA, MAINE 04333-0022

AMANDA E. BEAL
COMMISSIONER
STACIE R. BEYER
EXECUTIVE DIRECTOR

Memorandum

To: LUPC Commissioners

CC: Stacie R. Beyer, Executive Director

From: Stacy Benjamin, Chief Planner and Megan Leach, Senior Planner

Date: December 6, 2023

Re: Amendment A to ZP 682: Staff-initiated petition to rezone lands encompassed by the *Brassua Lake Concept Plan* (P-RP 012)

The *Brassua Lake Concept Plan* (Concept Plan) and its associated Resource Plan Protection subdistrict (P-RP) will expire on January 29, 2024. When a concept plan expires, the Commission must initiate a rezoning process to replace the former plan area with zoning that provides comparable protection for existing resources. Staff prepared draft replacement zoning for the subject P-RP subdistrict and presented the maps at the September 13, 2023 Commission meeting. At that meeting, the Commission directed staff to post the draft replacement zoning to a 30-day public comment period.

One comment on the proposed rezoning was received during the comment period (Attachment A). The draft replacement zoning maps are now ready for consideration by the Commission for a decision on adoption. The proposed replacement zoning is described in detail in the attached draft decision document (Attachment B). The draft zoning map is attached at the end of the draft decision.

REPLACEMENT ZONING PROCESS

When a Resource Protection Plan and associated P-RP subdistrict expires, the Commission is tasked with rezoning the area previously covered by the P-RP subdistrict. The process is outlined in Chapter 10, Section 10.23,H,8:

“The provisions of an approved and recorded Resource Plan shall apply for the duration of the approved time period, except that any conservation measures taken to strike a reasonable and publicly beneficial balance in a lake concept plan shall continue to apply to the extent that they are covered by legal contract, deeded covenants, permit requirements, or other legal

instruments. ...At the termination of a plan, the Commission will, in conformity with its comprehensive plan, statute, and standards, designate appropriate zoning which is reasonably consistent with zoning in accordance with Section 10.08,A.

In the event that a plan is terminated, all transactions initiated as a component of the plan, including without limitation, the granting of conservation easements or restrictive covenants on subdivided lands will continue to apply to the extent that they are covered by legal contract, deeded covenants, permit or other legal requirements.”

Under the provisions of Section 10.23,H,8, staff has identified appropriate replacement zoning for the Concept Plan area based on the scenic, recreational, and natural resources present, property owner input and unique site characteristics, and the limited areas of development that were approved under the Concept Plan and subsequent permitting.

PRE-POSTING LANDOWNER AND AGENCY REVIEW

To initiate the rezoning process, draft proposed zoning maps were sent for informal review to EMC Holdings, LLC, and all other landowners within the Concept Plan area in February of 2023. Initial drafts of the zoning maps were also sent to the Bureau of Parks and Lands (BPL), the Maine Forest Service (MFS), the Maine Historic Preservation Commission (MHPC), the Maine Department of Inland Fisheries & Wildlife (MDIFW), and the Maine Natural Areas Program (MNAP) for review in early February. MHPC, MDIFW, and MNAP responded and did not have concerns regarding the proposed rezoning. Staff discussed the proposed zoning with the President of the Brassua Lake Owners Association and answered questions from several property owners within the Poplar Hill subdivision. During this time, one property owner requested a public hearing through an email exchange with staff. The property owner had questions about potential future development in the area proposed for rezoning. After further communication with staff, the property owner concluded that the homeowners’ association should request a question-and-answer session with staff if needed.

PUBLIC NOTICE AND COMMENT PERIOD

On September 18, 2023, Commission staff filed the application for the zoning changes and provided notice of filing of the application to all persons owning or leasing land within 1,000 feet of the P-RP boundary and the Somerset County Commissioners. The petition materials and public notice were made available the same day on the Commission’s website and electronic permit report. Resource agencies were also notified via email or paper mail of the petition filing and public comment period. BPL responded that they had no comments or concerns. An electronic GovDelivery notice was sent to the Commission’s Somerset County and LUPC News and Information subscription lists on September 18, 2023.

The public comment period opened on September 18, 2023, and closed on October 20, 2023. One comment on the rezoning was received during the public comment period (Attachment A). The commenter, Dark Sky Maine, requested that dark sky lighting be included in this replacement zoning. The Commission’s lighting standards in Chapter 10, Section 10.25(F)(2) are

development standards applied during permit application review. They do not apply to applications for rezoning. Therefore, no further action was taken in response to the comments. No requests for a public hearing were received during the formal comment period.

REVIEW CRITERIA

The Commission's general criteria for adoption or amendment of land use district boundaries are provided in 12 M.R.S. §685-A(8-A) of the Commission's statute and restated in Chapter 10 §10.08,A of the Commission's Land Use Districts and Standards, 01-672 C.M.R. Ch. 10, last revised August 11, 2023 (Chapter 10). The criteria specify that a land use district boundary may not be adopted or amended unless there is substantial evidence that:

- 1) The proposed land use district is consistent with the standards for district boundaries in effect at the time, the comprehensive land use plan (CLUP), and the purpose, intent, and provisions of Chapter 206-A; and
- 2) There is substantial evidence that the proposed land use district has no undue adverse impact on existing uses or resources, or a new district designation is more appropriate for the protection and management of existing uses and resources within the affected area.

The attached draft decision document presents the criteria for approval and the land use standards, analysis, and findings most relevant to the zoning petition. The staff analysis determined that all the relevant criteria and standards have been met.

STAFF RECOMMENDATION

Staff recommends that the Commission approve Amendment A to Zoning Petition 682, a staff-initiated petition to replace the expiring Resource Plan Protection subdistrict with other appropriate zoning in Tomhegan Township, Somerset County, Maine.

Attachment A: Public Comment Received

Attachment B: Draft Decision Document

Attachment C: Draft Zoning Map

ATTACHMENT A

PUBLIC COMMENT RECEIVED

On the Proposed Rezoning of the Brassua Lake
Concept Plan Area

Public Comment Period: September 18 - October 20, 2023

From: [Dark Sky Maine](#)
To: [Benjamin, Stacy](#)
Subject: Public hearing
Date: Monday, September 18, 2023 1:07:12 PM

EXTERNAL: This email originated from outside of the State of Maine Mail System. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Pursuant to provisions of 12 M.R.S. Section 685-B and the Commission's rule Chapter 10, Land Use Districts and Standards, a staff-initiated zoning petition has been submitted to the Maine Land Use Planning Commission that proposes replacement zoning for the lands included in the *Brassua Lake Concept Plan* (Concept Plan) and its associated Resource Protection subdistrict (P-RP 012) in Somerset County. The current major property owner does not wish to renew the 20-year Concept Plan, so it will expire on January 29, 2024.

Hello

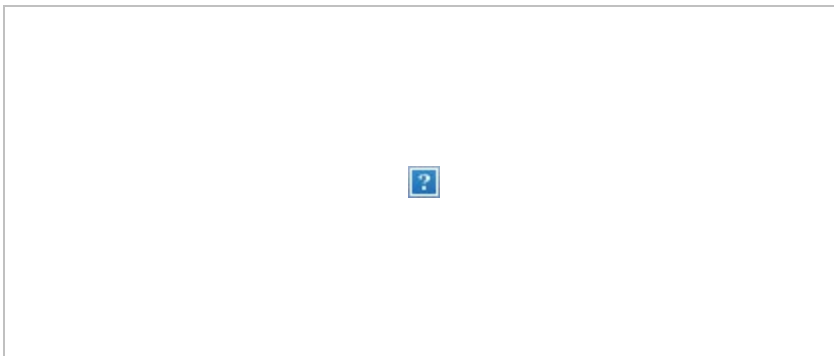
Please include Dark Sky Lighting in this replacement zoning.

Thank you

Nancy Hathaway, president

Dark Sky Maine

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darkskymaine@gmail.com

ATTACHMENT B

DRAFT DECISION DOCUMENT

for

ZONING PETITION

ZP 682-A



JANET T. MILLS
GOVERNOR

STATE OF MAINE
DEPARTMENT OF AGRICULTURE, CONSERVATION & FORESTRY
LAND USE PLANNING COMMISSION
22 STATE HOUSE STATION
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AMANDA E. BEAL
COMMISSIONER
STACIE R. BEYER
EXECUTIVE DIRECTOR

**COMMISSION DECISION
IN THE MATTER OF**

Staff, Maine Land Use Planning Commission

Findings of Fact and Decision

AMENDMENT A TO ZONING PETITION ZP 682

The Maine Land Use Planning Commission (Commission), at a meeting of the Commission held December 13, 2023, at Brewer, Maine, after reviewing the draft land use guidance maps, petition, and supporting documents submitted by the staff of the Maine Land Use Planning Commission for Amendment A to Zoning Petition ZP 682, review agency and public comments, and other related materials on file, and pursuant to 12 M.R.S. Sections 681 et seq. and the Commission's standards and rules, finds the following facts:

1. **Applicant:** Staff (Attn: Stacy Benjamin)
Maine Land Use Planning Commission
22 State House Station
Augusta, Maine 04333-0022
2. **Complete for Processing Date:** September 21, 2023
3. **Location of Proposal:** Tomhegan Township, Somerset County, Maine
4. **Current Zoning:** Resource Plan Protection Subdistrict (P-RP)
5. **Proposed Zoning Subdistricts:** (*see attached map*)
 - Residential Development (D-RS)
 - General Management (M-GN)
 - Great Pond Protection (P-GP)
 - Shoreland Protection (P-SL2)
 - Wetland Protection (P-WL1, P-WL2, and P-WL3)
6. **Affected Water Bodies:** Brassua Lake and Baker Pond. (*See Table 1 below*).



Table 1. Affected Water Bodies

Water Body Name	Location	Mgmt. Class	Outstanding Resource Values	Significant Resource Values	Resource Class
Brassua Lake	Tomhegan Twp	3	cultural	fisheries	1B
Baker Pond	Tomhegan Twp	7	n/a	n/a	3

I. PROJECT DETAILS

7. Administrative History:

A. Zoning Petition ZP 682: The Commission approved ZP 682, *Brassua Lake Concept Plan* (Concept Plan or Plan), in January 2004. The resulting Resource Protection (P-RP) subdistrict became effective on January 29, 2004 and covers a large portion of Tomhegan Township. The Concept Plan and its associated P-RP subdistrict were approved for a term of 20 years. Moosehead Wildlands, Inc. was the sole applicant and proposed a plan for the long-term management and conservation of their land in Tomhegan Township surrounding Brassua Lake and Baker Pond.

- 1) *Description of the Concept Plan Area*. The Concept Plan area covers approximately 5,673 acres in Tomhegan Township, including the entirety of Baker Pond and approximately 78,689 feet of shore frontage on Brassua Lake.
- 2) *Development within the Concept Plan Area*. Development components of the Concept Plan are summarized in Table 2 below. Three subdivision permits have been issued authorizing a total of 54 lots. Additional permits associated with the subdivision include a road permit, utility line permit, a shoreline alteration permit for a trailered boat launch, and various building permits.

Table 2. Development Components and Status

Development Components Included in the Concept Plan	2023 Status
Area A: 213-acre shorefront parcel to become a 52-lot residential subdivision (Poplar Hill)	SP 4053, SP 4070, SP 4079, RP 3239, & ULP 422 have all approved development of the Poplar Hill Subdivision. The lots have all been sold to private owners, and various building permits have been issued for residential dwellings and accessory structures on many of the lots.
Area B: 11-acre shorefront lot to support the Poplar Hill Subdivision. Includes a private boat launch.	GP 3317 authorized construction of the private trailered boat launch for the residents of the Poplar Hill Subdivision. The boat launch has been constructed.
Area C: 265-acre shorefront lot to include a ten-cabin sporting camp with one manager's dwelling and a private boat launch. After the sporting camp location and Area E are selected, the remainder of the lot will be added to the permanent conservation easement.	No development or permits have been identified. The area has not been added to the permanent conservation easement.
Area D: 7.5-acre shorefront lot on Baker Pond. A 2-acre shorefront lot will be selected, and the remainder of the lot will be added to the permanent conservation easement.	No development or permits have been identified. The area has not been added to the permanent conservation easement.
Area E: 2-acre shorefront lot located within area C.	No development or permits have been identified.
Area F: 54 +/- acre shorefront lot with reserved rights for two dwelling units and an access road.	No development or permits have been identified.
Area G: 49 +/- acres with the reserved rights to divide into five lots – four lots to be residential parcels with one dwelling each, and the fifth lot to be retained by Moosehead Wildlands, Inc.	SP 4053 authorized three new subdivision lots plus one lot that sold prior to Concept Plan approval.
Public hand-carry boat launch	BLN 07-1 - no record of actual site development
Recreational trail and cabin system with nine cabins.	No development or permits have been identified.

- 3) *Permanent Conservation Measures in Place.* Conservation measures outlined in the Concept Plan are summarized in Table 3 below.

Table 3. Conservation Components

Conservation Components Included in the Concept Plan	2023 Status
Permanent Conservation Easement: 1,185 +/- acres, (512 +/- acres on Brassua Lake’s western peninsula including shorefront, 200 +/- acres on Brassua Lake’s eastern shorefront, 108 +/- shorefront acres on Baker Pond, 30 +/- shorefront acres associated with Area C, 5 +/- shorefront acres associated with Area D, and 330 acres on the interior section of Poplar Hill), in permanent conservation. This includes 49,425 +/- feet of Brassua Lake’s shorefront, and 8,205 feet of Baker Pond’s shorefront; or a total of 10.9 +/- miles of shorefront.	Shore frontage within Area C and Area D has not been placed in permanent conservation. All other areas proposed to be in permanent conservation by the Concept Plan have been placed in a Permanent Conservation Easement with Maine Huts & Trails and the State of Maine Department of Agriculture, Conservation, & Forestry acting as easement holders.
Twenty-Year Conservation Area: The remaining 4,117 +/- acres covered by the Concept Plan are to be placed in temporary conservation for the duration of the Plan.	This conservation area will expire with the Concept Plan on January 29, 2024.
Common Open Space: The Poplar Hill peninsula will include approximately 40 acres (3,000 feet of shore frontage) of common open space for the property owners within the proposed subdivision.	40 acres (3,000 feet of shore frontage) are part of the common open space defined in SP 4053, SP 4070, and SP 4079.
Deed Restrictions: Protective deeded covenants include limits on building size and material and clearing size to maintain the existing character of Brassua Lake. No additional division of lots is allowed.	Deed restrictions have been included in all deeds, and all lots of the Poplar Hill Subdivision have been sold. Some property owners own multiple lots.

- B. Current Ownership: Since the approval of the 2004 Concept Plan, the Plan area has changed ownership three times and the current majority landowner is EMC Holdings, LLC. All of the subdivision lots approved by SP 4053, SP 4070, and SP 4079 have been sold to private parties.
- C. Expiration of the Concept Plan: *The Brassua Lake Concept Plan* and its associated Resource Plan Protection subdistrict (P-RP 012) became effective January 29, 2004 and expires on January 29, 2024. Commission Staff contacted the current majority landowner in February of 2023 and was notified at that time that the landowner did not wish to renew the Concept Plan. As provided in Chapter 10, §10.23(H)(8), at the termination of a plan, the Commission will, in conformity with its comprehensive plan, statutes, and standards, designate appropriate zoning which is reasonably consistent with zoning in accordance with Section 10.08(A). Commission staff therefore began the process of identifying appropriate replacement zoning.

Additionally, Chapter 10, §10.23(H)(8) states that in the event that a concept plan is terminated, all transactions initiated as a component of the plan, including without limitation, the granting of conservation easements or restrictive covenants on subdivided lands will continue to apply to the extent that they are covered by legal contract, deeded covenants, permit or other legal requirements.

8. **Proposal:** The Commission seeks to rezone the Resource Plan Protection (P-RP) subdistrict currently applied to the area included in the *Brassua Lake Concept Plan* due to the impending expiration of the Plan. The majority of lands within the Concept Plan area are owned primarily by EMC Holdings, LLC, which does not wish to renew the Concept Plan and associated zoning. The permanent conservation easements will remain in place. No new development is proposed. Staff have identified appropriate replacement zoning for the Concept Plan area based on existing development, original zoning, the resources that are present, and input from property owners and resource agencies. The proposed zoning changes are described in detail below.
9. **Site Visits:** Staff visited the vicinity of the project area on June 30, 2023, including Areas A, B, and G. Due to the remote nature of other portions of the property, staff were unable to visit Areas C, D, E, or F.

II. RULES OF PRACTICE AND PUBLIC PROCESS

10. Notice Requirements:

- A. Criteria: Notice as required by Chapter 4, §4.04(B)(3)(a)(1) and described in Sections 4.04(B)(3)(a)(2) and (3) of the Commission's *Rules of Practice*, 01-672 C.M.R. Ch. 4, last revised November 01, 2021 (Chapter 4), is required for applications for zone changes, except those proposing to change a development subdistrict designation to a management or protection subdistrict designation, and applications addressing clerical corrections. The Commission staff may provide, or require an applicant to provide, additional notice related to an application in any manner the Commission staff deems appropriate. Chapter 4, §4.04(A)(3)(b).
- B. Analysis: At its September 13, 2023 meeting, the Commission directed staff to post the proposed replacement zoning for a 30-day public comment period. The application for zone change was filed on September 18, 2023, and made available the same day on the Commission's website and via the electronic permit report. Also on September 18, 2023, Commission staff provided notice of filing of the application for zone change to all persons owning or leasing land within 1,000 feet of the P-RP boundary and the Somerset County Commissioners. An electronic GovDelivery notice was sent to the Commission's Somerset County and LUPC News and Information subscription lists on the same day. The public comment period was held from September 18, 2023–October 20, 2023.
- C. Landowner Review: To initiate the rezoning process, a draft proposed zoning map was sent for informal review to EMC Holdings, LLC and to all other landowners within the Concept Plan area in July of 2023. Staff discussed the rezoning process with a representative of the

Brassua Lake Owners Association (BLOA) and answered questions from several other owners.

Once the formal public comment period began, all landowners were again notified via email or paper mail of the petition filing and public comment period.

- D. Resource Agency Review and Comments: An initial draft of the zoning map was sent to the Bureau of Parks and Lands (BPL), the Maine Forest Service (MFS), the Maine Historic Preservation Commission (MHPC), the Maine Department of Inland Fisheries & Wildlife (MDIFW), and the Maine Natural Areas Program (MNAP) for review in July 2023. MNAP, MDIFW, BPL, and MHPC responded that they had no comments or concerns with the proposed rezoning.

Once the formal public comment period began, the resource agencies noted above were again notified and sent copies of the petition filing with a request for comments. No comments from these resource agencies were received.

- E. Public Comments and Public Hearing: Several landowners contacted staff with questions about the rezoning when the initial letters were sent in July. During the informal comment period, one owner submitted questions and requested a public hearing. The owner was notified that the request would be noted, but they should submit the request again during the formal public comment period.

One comment on the rezoning was received during the public comment period. The commenter, Dark Sky Maine, requested that dark sky lighting be included in this replacement zoning. The Commission's lighting standards in Chapter 10, Section 10.25(F)(2) are development standards applied during permit application review. They do not apply to applications for rezoning. Therefore, no further action was taken in response to the comments. No requests for a public hearing were received during the formal comment period.

- F. Finding: Based upon the record and the above analysis, the Commission finds that the application for zone change was properly noticed and consistent with the applicable sections of Chapter 4, Sections 4.04(B)(3)(a)(1)(2) and (3), and 4.04(A)(3)(b).

III. GENERAL CRITERIA FOR ADOPTION OR AMENDMENT OF LAND USE DISTRICT BOUNDARIES

A land use district boundary may not be adopted or amended unless there is substantial evidence that: 1) the proposed land use district is consistent with the standards for district boundaries in effect at the time, the comprehensive land use plan and the purpose, intent and provisions of Chapter 206-A; and 2) there is substantial evidence that the proposed land use district has no undue adverse impact on existing uses or resources or a new district designation is more appropriate for the protection and management of existing uses and resources within the affected area. 12 M.R.S. §685-A(8-A) of the Commission's statute and restated in Section 10.08(A) of the Commission's *Land Use Districts and Standards*, 01-672 C.M.R. Ch. 10, last revised August 11, 2023 (Chapter 10).

11. Consistency with the Standards for District Boundaries:

- A. Criteria and standards: A land use district boundary may not be adopted or amended unless there is substantial evidence that the proposed land use district is, among other criteria, consistent with the standards for district boundaries in effect at the time. 12 M.R.S. §685-A(8-A)(A), restated in Chapter 10, §10.08(A)(1).

Regarding the duration and termination of a Resource Protection Plan, relevant criteria are provided in Chapter 10, §10.23(H):

At the termination of a plan, the Commission will, in conformity with its comprehensive plan, statutes, and standards, designate appropriate zoning which is reasonably consistent with zoning in accordance with Section 10.08,A. In the event that a plan is terminated, all transactions initiated as a component of the plan, including without limitation, the granting of conservation easements or restrictive covenants on subdivided lands will continue to apply to the extent that they are covered by legal contract, deeded covenants, permit or other legal requirements.

1) *Residential Development Subdistrict (D-RS)*

- a) **Description:** In accordance with Chapter 10, §10.21(M)(1), the purpose of the D-RS subdistrict is to set aside certain areas for residential and other appropriate uses to provide for residential activities apart from areas of commercial development. According to Chapter 10, §10.21(M)(2)(a)(2), the D-RS subdistrict must include “Recorded and legally existing single family residential subdivisions, including mobile home parks, having 4 or more lots.”
- b) **Proposed Zoning:** In accordance with Chapter 10, §10.21(M)(2)(a)(2), the lots approved in SP 4053, SP 4070, and SP 4079 are proposed to be zoned D-RS Subdistrict. Any deed restrictions or covenants in place for a given property remain in place regardless of the zoning.

2) *General Management Subdistrict (M-GN)*

- a) **Description:** In accordance with Chapter 10, §10.22(A)(1), the purpose of the M-GN subdistrict is to permit forestry and agricultural management activities to occur with minimal interferences from unrelated development in areas where the Commission finds that the resource protection afforded by protection subdistricts is not required. As described in Section 10.22(A)(2), this subdistrict is described as applying to areas that are appropriate for forest or agricultural activities, and that do not require the special protection afforded by the protection subdistricts.
- b) **Proposed Zoning:** All areas not zoned for development or protection will be zoned M-GN Subdistrict.

3) *Great Pond Protection Subdistrict (P-GP)*

- a) **Description:** In accordance with Chapter 10, §10.23(E)(1), the purpose of the P-GP Subdistrict is “to regulate residential and recreational development on Great Ponds to protect water quality, recreation potential, fishery habitat, and scenic character.” In

accordance with Section 10.23(E)(2), the P-GP subdistrict shall include areas within 250 feet of the normal high-water mark, measured as a horizontal distance landward of such high-water mark, of those bodies of standing water 10 acres or greater in size.

- b) **Proposed Zoning:** The shorelines of Brassua Lake and Baker Pond included in the Concept Plan area will be zoned P-GP Subdistrict within 250 feet, measuring in a straight line from the normal high-water mark of those water bodies, except for land otherwise designated as D-RS subdistrict.

4) *Shoreland Protection Subdistrict (P-SL2)*

- a) **Description:** As provided in Chapter 10, §10.23(L)(1), the purpose of the P-SL subdistrict is to regulate certain land use activities in certain shoreland areas in order to maintain water quality and plant, fish, and wildlife habitat, and in order to protect and enhance scenic and recreational opportunities. As described in Section 10.23(L)(2), this subdistrict includes:

P-SL2 - Areas within 75 feet, measured as a horizontal distance landward, of (a) the normal high water mark of flowing waters upstream from the point where such channels drain 50 square miles and (b) the upland edge of those freshwater wetlands identified in Section 10.23,N,2,a,(1),(c) and (2), and (3); and (c) the normal high water mark of bodies of standing water less than 10 acres in size, but excluding bodies of standing water which are less than three acres in size and which are not fed or drained by a flowing water.

- b) **Proposed Zoning:** A 75-foot P-SL2 Subdistrict will be placed along minor flowing waters, the upland edge of wetlands, and bodies of water less than 10 acres in size. P-SL2 Subdistrict areas are not always depicted on the draft map because they are too narrow at that scale, but nevertheless will be in effect in these areas.

5) *Fisheries and Wildlife Protection Subdistrict (P-FW)*

- a) **Description:** As provided in Chapter 10, §10.23(D)(1), the purpose of the P-FW subdistrict is to conserve important fish and wildlife habitats essential to the citizens of Maine because of their economic, recreational, aesthetic, educational or scientific value. As described in Section 10.23(D)(2), this subdistrict may include significant fish spawning nursery and feeding areas, critical habitat of endangered and threatened fish and wildlife species ascertained by state or federal agencies, and habitat of fish or wildlife species needing special protection by other means, including by a state fish or wildlife conservation plan; and the shelter portions of deer wintering areas if specific conditions are met.
- b) **Proposed Zoning:** The P-FW subdistrict originally in place prior to the designation of the Concept Plan will be restored in the same location on the southern side of Baker Pond and connecting with an existing P-FW that extends through an abutting property. The Maine Department of Inland Fisheries and Wildlife has not recommended any changes to the proposed P-FW boundaries.

6) *Wetland Protection Subdistrict (P-WL1, 2 & 3)*

- a) **Description:** As provided in Chapter 10, §10.23(N)(1), the purpose of the P-WL subdistrict is to conserve coastal and freshwater wetlands in essentially their natural state because of the indispensable biologic, hydrologic and environmental functions which they perform.
 - a) **Proposed Zoning:** Proposed zoning includes P-WL1, 2, or 3 subdistrict zoning for all wetland areas depicted on the National Wetland Inventory map, in accordance with definitions in Section 10.23(N)(2).
- B. Analysis: All proposed zoning considers appropriate protection of the resources present and is based on existing conditions. Development zones have been designated only around subdivision lots approved under the Concept Plan. No changes in use or additional allowed uses are proposed as part of the zoning petition.
- C. Finding: Given the descriptions of the proposed subdistricts, Finding #13(C) below regarding existing uses and resources, and analysis of the proposal as a whole, the Commission finds that the proposed subdistricts are consistent with the standards for district boundaries in effect at this time in accordance with 12 M.R.S. §685-A(8-A) of the Commission's statute and restated in Chapter 10, §10.08(A).

12. **Consistency with the Comprehensive Land Use Plan (CLUP):**

- A. Criteria: Pursuant to 12 M.R.S. §685-C(1), the Commission has adopted a *Comprehensive Land Use Plan*, ver. 2010 that guides the Commission in developing specific land use standards, delineating district boundaries, siting development, and generally fulfilling the purposes of the Commission's governing statute. The CLUP includes goals, policies and principles that address, among other items, land conservation, forest resources, recreational resources, scenic resources, and water resources, which the Commission evaluates regarding a proposal's consistency with the CLUP.
- 1) *Land Conservation:* The land conservation goal outlined in the CLUP encourages the long-term conservation of select areas of the jurisdiction that are particularly representative of its cultural and natural values, including working forests, high-value natural resources, and recreational resources. CLUP, pg. 10.
 - 2) *Forest Resources:* The forest resources goal outlined in the CLUP aims to conserve, protect, and enhance the forest resource in a way that preserves its important values, including timber and fiber production, ecological diversity, recreational opportunities, as well as the relatively undeveloped remote landscape that it creates. CLUP, pg. 14. Related policies include:
 - a) Supporting uses that are compatible with continued timber and wood fiber production, as well as outdoor recreation, biodiversity, and remoteness, and discourage development that will interfere unreasonably with these uses and values; and

- b) Protecting areas identified as environmentally sensitive by regulating forestry activities, timber harvesting and construction of land management roads.
- 3) *Recreational Resources:* The recreational resources goal in the CLUP aims to conserve the natural resources that are fundamental to maintaining the recreational environment that enhances diverse, abundant recreational opportunities. CLUP, pg. 17. Relevant policies include:
- a) Encouraging diverse, non-intensive and nonexclusive use of recreational resources and protection of primitive recreational opportunities in certain locations; and
 - b) Supporting cooperative efforts that ensure continued public access across, and recreational use of, private lands; and
 - c) Supporting efforts that ensure continued public access to public waters.
- 4) *Scenic Resources:* The scenic resources goal in the CLUP aims to protect the high-value scenic resources of the jurisdiction by fitting proposed land uses harmoniously into the natural environment. CLUP, pg. 18.
- 5) *Water Resources:* The water resources goal in the CLUP aims to preserve, protect, and enhance the quality and quantity of surface waters and groundwater, with policies including protecting the recreational and aesthetic values associated with water resources, and conserving and protecting lakes, ponds, rivers, streams, and their shorelands, which provide significant public recreational opportunities. CLUP, pg. 18.

B. Analysis:

- 1) *Land Conservation:* The proposed zoning will not affect the permanent conservation easements in place within the Concept Plan area. These easements, together with more recent additions, will continue to support the CLUP goal of long-term conservation of a unique region of working forest, high-value natural resources, and remote recreational resources.
- 2) *Forest Resources:* Proposed zoning, in combination with the conservation easements, will allow for long-term forest resource management, and compatibility with outdoor recreation, local biodiversity, and protection of environmentally sensitive areas.
- 3) *Scenic Resources:* Proposed zoning in conjunction with the permanent conservation easements will limit allowed uses and minimize the scale and intensity of any future development, which will help to maintain and protect the natural aesthetic values within the area. See section 11(A)(1-6) above for additional details.
- 4) *Water Resources:* Much of the shoreline of the lakes encompassed in the Concept Plan area is permanently protected through conservation easements. As proposed, most of the shoreland areas along Brassua Lake and Baker Pond will be designated P-GP, which appropriately manages shoreland uses and provides water quality protection. In addition, most of the shorelines of flowing waters will be designated P-SL, which appropriately manages shoreland uses and provides water quality protection for those

resources. See section 11 above for additional details on the purpose and descriptions of these subdistricts.

- C. Finding: Based on the analysis included in Section 12, the Commission finds the proposed rezoning is consistent with the *Comprehensive Land Use Plan*.

13. No Undue Adverse Impact:

- A. Criteria: A land use district boundary may not be adopted or amended unless there is substantial evidence that the proposed land use district has no undue adverse impact on existing uses or resources, or a new district designation is more appropriate for the protection and management of existing uses and resources within the affected area. 12 M.R.S. §685-A(8-A)(B), restated in Chapter 10, §10.08(A)(2).

B. Analysis:

- 1) *Existing uses*: Proposed zoning changes will accommodate the continued use of this large area for forest management and timber harvesting activities, as well as recreational uses. No development areas are proposed other than the D-RS subdistricts designated for previously approved subdivision lots. Therefore, no undue adverse impacts to existing uses are expected as a result of the rezoning.

2) *Existing resources*:

- a) **Forestry Resources**: The application was sent to the Maine Forest Service for review. MFS did not submit any comments on the proposed zoning.
- b) **Fish and Wildlife Resources**: The Maine Department of Inland Fisheries and Wildlife (MDIFW) reviewed the petition and stated that they have no concerns with the proposed change based on the understanding that the Department will have the opportunity to comment on any future permit applications with the potential to impact their jurisdictional resources.
- c) **Plant Species and Communities**: The Maine Natural Areas Program (MNAP) reviewed the petition and concluded there are no recorded rare botanical features present within the project area. An exemplary Spruce-Northern Hardwoods Forest that existed at Poplar Hill has been harvested MNAP has not field surveyed other locations within the project area and provided no additional comments regarding the rezoning.
- d) **Historic Resources**: The Maine Historic Preservation Commission (MHPC) reviewed the petition and did not submit any comments on the proposed zoning.
- e) **Recreational Resources**: The Maine Bureau of Parks and Lands reviewed the proposed zoning with regard to existing and anticipated public recreational uses and indicated they did not have any comments regarding the proposed rezoning.
- C. Finding: As a result of this initial evaluation of the potential impacts on existing uses and resources, and given that any review of future development proposals would likely include consultations with the applicable resource agencies, the Commission finds that there is substantial evidence that the proposed land use districts will have no undue adverse impact on

existing uses or resources in accordance with 12 M.R.S. §685-A(8-A)(B), restated in Chapter 10, §10.08(A)(2).

14. Consistency with 12 M.R.S., CH. 206-A:

- A. Criteria: A land use district boundary may not be adopted or amended unless, among other criteria, there is substantial evidence that the proposed land use district is consistent with the purpose, intent, and provisions of 12 M.R.S. ch. 206-A. 12 M.R.S. §685-A(8-A)(A), restated in Chapter 10, §10.08(A)(1). The purpose and scope of 12 M.R.S. ch. 206-A includes principles of sound planning, zoning, and development. Whether a project provides for consistent, effective, and appropriate land management and resource protection are important considerations for large-scale zoning projects such as described herein.
- B. Analysis: As discussed in Findings 11, 12, and 13 above, the proposed rezoning reflects the most appropriate replacement subdistricts, is consistent with the CLUP, and will effectively provide for continued long-term management of the Concept Plan area for forest resources, natural resources, and recreational resources.
- C. Finding: The Commission finds, in general, that its determination on consistency with the CLUP establishes consistency with the purpose and scope of the statute under which the CLUP must be adopted. This finding is based on the following: The purpose and scope of Chapter 206-A are embodied in the broad goals of the CLUP, and, in accordance with 12 M.R.S. §685-C(1), “[t]he [C]ommission must use the [CLUP] as a guide in ... generally fulfilling the purposes of this chapter.” Given the above analysis for this project, the Commission finds that the proposed rezoning is otherwise consistent with the purpose and intent of the statute.

15. The facts are otherwise as represented in the application for Amendment A to Zoning Petition ZP 682 and supporting documents.

IV. FINAL CONCLUSIONS

Based upon the above analysis and findings:

- 1. The Commission concludes that there is substantial evidence in the record (see Finding #11) that the proposed land use districts are consistent with the standards for district boundaries in effect at this time, satisfying the corresponding portions of 12 M.R.S. §685-A(8-A)(A), restated in Chapter 10, §10.08(A)(1).
- 2. The Commission concludes that there is substantial evidence in the record (see Finding #12) that the proposed land use districts are consistent with the *Comprehensive Land Use Plan*, satisfying the corresponding portions of 12 M.R.S. §685-A(8-A)(A), restated in Chapter 10, §10.08(A)(1).
- 3. The Commission concludes that there is substantial evidence in the record (see Finding #13) that the proposed land use districts have no undue adverse impact on existing uses or resources, satisfying the corresponding portions of 12 M.R.S. §685-A(8-A)(B), restated in Chapter 10, §10.08(A)(2).

4. The Commission evaluated the petition with respect to consistency with 12 M.R.S. ch. 206-A and the principles of sound planning, zoning, and development. Having considered the existing uses and resources; the type and intensity of the development that the rezoning is intended to accommodate; the permanent measures in place to protect scenic, natural, and recreational resources; the review agency comments; and the record as a whole, the Commission concludes approval of the petition would be an act of sound land use planning, and that the proposed rezoning is consistent with the purpose, intent and provisions 12 M.R.S. ch. 206-A, satisfying the corresponding portions of 12 M.R.S. §685-A(8-A)(A), restated in Chapter 10, §10.08(A)(1).

Therefore, the Commission approves the petition of the Maine Land Use Planning Commission staff to replace the expiring Resource Plan Protection subdistrict with other appropriate zoning in Tomhegan Township, Somerset County, Maine.

In accordance with 5 M.R.S. §11002 and Maine Rules of Civil Procedure 80C, this decision by the Commission may be appealed to Superior Court within 30 days after receipt of notice of the decision by a party to this proceeding, or within 40 days from the date of the decision by any other aggrieved person. In addition, where this decision has been made without a public hearing, any aggrieved person may request a hearing by filing a request in writing with the Commission within 30 days of the date of the decision.

DONE AND DATED AT BREWER, MAINE THIS 13TH DAY OF DECEMBER 2023.

By: _____
Stacie R. Beyer, Executive Director

The changes in subdistrict designations are effective on January 29, 2024.¹

¹In accordance with the Concept Plan approved by the Commission in ZP 682, replacement zoning for those areas encompassed by the resource protection plan subdistrict become effective upon expiration of the plan.

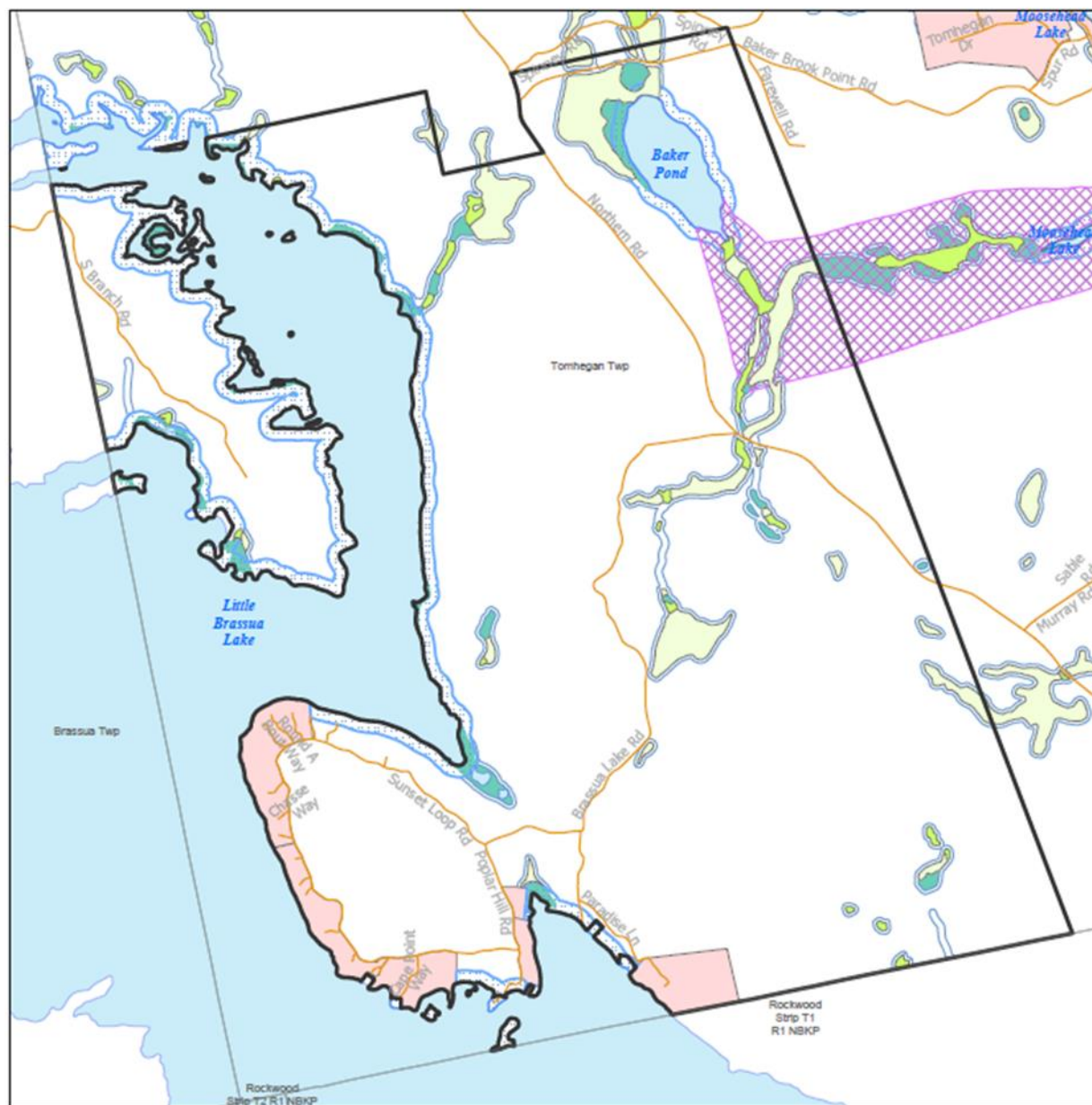
ATTACHMENT C

DRAFT ZONING MAP

for

ZONING PETITION

ZP 682-A



Brassua Lake Concept Plan Expiration: Proposed Rezoning

DRAFT - 6/27/2023

-  Brassua Lake Concept Plan Area (P-RP 012)
- Towns**
-  LUPC Service Area
-  E911 Roads
- Lakes/Ponds**
-  Lake/Pond
-  D-RS: Residential
-  M-GN: General
-  P-FW: Fish and Wildlife
-  P-GP: Great Pond
-  P-SL2: Shoreland - 75'
-  P-WL1: Wetlands of Special Significance
-  P-WL2: Scrub-shrub Wetlands
-  P-WL3: Forested Wetlands



0 1,250 2,500 5,000
Feet